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PRIMUS INTER PARES: IS THE SINGAPORE JUDICIARY FIRST AMONG EQUALS?

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Abstract: Chief Justice Yong Pung How has implemented many changes in the Singapore judicial system since his appointment to the post in 1990. The reforms have concentrated on active case management, providing mediation as an alternative mechanism to resolve disputes, and implementing information technology in the courtroom. One of the results of these reforms is that the backlog of cases has been eliminated and the judicial system has become dramatically more efficient. However, an increased efficiency in judicial administration cannot be justified if it is attained at the expense of restricting access to justice. This Comment reviews the judicial reforms in Singapore and examines their impact. Based in part on national and international surveys that examine the administration of justice, this Comment concludes that the judicial reforms have not impeded access to a just resolution of disputes in Singapore.

I. INTRODUCTION

The Singapore judicial system consistently obtains high ratings in international and national surveys.¹ These surveys indicate that the public perception of corruption is low² and that public confidence in the fair administration of justice is high.³ A recent study further found that Singapore courts had the highest case clearance rate among the countries surveyed.⁴ These achievements are largely due to extensive judicial reforms implemented by Chief Justice Yong Pung How⁵ since his appointment ten

[†] The author wishes to thank Professor Kevin Y.L. Tan, Faculty of Law, Singapore National University; Thian Yee Sze, Assistant Registrar of the Singapore Supreme Court, and Professor John O. Haley, School of Law, Washington University in St. Louis, for valuable materials, information and comments. The author also wishes to thank Keith Fournier, Eva Blöchlinger, and Kurt Blöchlinger for their invaluable support and encouragement.

¹ See, e.g., Bruce Gale (Political and Economic Risk Consultancy, LTD), *Evaluating Singapore's National Institution*, July 28, 1999 (visited Feb. 27, 2000) <<http://www.asiarisk.com/library8.html>> [hereinafter Country Risk Report]; THE WORLD COMPETITIVENESS YEARBOOK 1999 (International Institute for Management Development 1999) [hereinafter WORLD COMPETITIVENESS YEARBOOK], reprinted in SUPREME COURT OF SINGAPORE ANNUAL REPORT 1999, at 76 [hereinafter ANNUAL REPORT 1999].

² See Transparency International, *The 1999 Transparency International Corruption Perceptions Index* (visited June 16, 2000) <<http://www.Transparency.de/documents/cpi/index.html>>.

³ See, e.g., Maria Dakolias, *Court Performance Around the World*, 2 YALE HUMAN RTS. & DEV. L.J. 87, 131 (1999).

⁴ *Id.* at 133.

⁵ See SUPREME COURT SINGAPORE, EXCELLENCE INTO THE NEW MILLENNIUM, at 19 (1999) [hereinafter SUPREME COURT SINGAPORE]. Chief Justice Yong was born in 1926 in Kuala Lumpur, Malaysia. *Id.* He obtained a Bachelor of Arts degree from Cambridge University and qualified as a

years ago.⁶ When Yong Pung How was appointed as Chief Justice in 1990, cases took six to seven years to reach the courts in Singapore.⁷ Delay in the administration of justice is not uncommon; it has continued to be an obdurate problem in most common law legal systems, contrary to the declaration in the Magna Carta that "to no one will we refuse or delay right or justice."⁸

The societal costs incurred by unnecessary delays in judicial administration are enormous. Hamlet cited "law's delay" as a reason for preferring suicide to continuing life.⁹ More recently, Justice Reavley of the Texas Supreme Court emphasized the serious consequences of court delay:

Delay haunts the administration of justice. It postpones the rectification of wrong and the vindication of the unjustly accused. It crowds the dockets of the courts, increasing the costs for all litigants, pressuring judges to take short cuts, interfering with the prompt and deliberate disposition of those causes in which all parties are diligent and prepared for trial, and overhanging the entire process with the pall of disorganization and insolubility. But even these are not the worst of what delay does. The most erratic gear in the justice

barrister-at-law of the Inner Temple in 1951. *Id.* He practiced law in Malaysia and Singapore for twenty years and was the head of the largest law firm in these two countries when he decided to leave the law for banking. See *How I Picked Yong Pung How for CJ*, STRAITS TIMES (Singapore), Nov. 3, 1995, available in LEXIS, News Group File. Some of his appointments before joining the Bench in 1989 were Managing Director of the Monetary authority of Singapore, Chairman of the Singapore Broadcasting Corporation, Chairman of the Overseas Chinese Banking Corporation, and Deputy Chairman of Singapore Press Holdings. SUPREME COURT SINGAPORE, *supra* at 5.

⁶ In 1989 Chief Justice Yong was appointed a Judge of the Supreme Court and a year later he was elevated to his current position as Chief Justice. SUPREME COURT SINGAPORE, *supra* note 5, at 19. He has personally dealt with more than 2,000 criminal appeals, and has written more than 500 judgments. See Tan Ooi Boon, *CJ Transformed Entire Legal Culture*, STRAITS TIMES (Singapore), Aug. 9, 1999, available in LEXIS, News Group File. In 2000, he received the top national day award in recognition of his contributions to the judiciary and legal service reform. *Chief Justice Gets Rare National Award*, STRAITS TIMES (Singapore), Nov. 6, 1999, available in LEXIS, News Group File.

⁷ Tan Ooi Boon, *supra* note 6.

⁸ The Magna Carta § 40, available in Indiana University Computer Science Department Website (visited June 16, 2000) <<http://www.cs.indiana.edu/statecraft/magna-carta.html>>.

⁹ For who would bear the whips and scorns of time,
Th'oppressor's wrong, the proud man's contumely,
The pangs of disprized love, the law's delay,
The insolence of office, and the spurns
That patient merit of th'unworthy takes,
When he himself might his quietus make
With a bare bodkin?

WILLIAM SHAKESPEARE, HAMLET, Act 3, Sc. 1, lines 72-78, reprinted in THE OXFORD SHAKESPEARE: THE COMPLETE WORKS 670 (Stanley Wells & Gary Taylor eds., 1998).

machinery is at the place of fact finding, and possibilities for error multiply rapidly as time elapses between the original fact and its judicial determination. If the facts are not fully and accurately determined, then the wisest judge cannot distinguish between merit and demerit. If we do not get the facts right, there is little chance for the judgment to be right.¹⁰

The problems associated with an inefficient system of justice have been recognized for centuries,¹¹ and yet, court delay remains a significant issue in civil litigation throughout the world today.¹² In India, backlog and delay in the resolution of civil cases has eroded public trust and confidence in the legal system.¹³ In the United States, litigation delays ostensibly raise constitutional concerns.¹⁴ As a result of the increase in civil and commercial disputes, the elimination of delay in the judicial process has become a major goal of judicial reform worldwide.¹⁵ Legal reforms aimed at reducing delay in litigation frequently focus on case management by judicial intervention and alternative mechanisms to resolve disputes.¹⁶

Over the past decade, Chief Justice Yong Pung How has implemented several changes in the judiciary of Singapore aimed principally at reducing the backlog of cases.¹⁷ The reforms include aggressive case management with an emphasis on alternative dispute resolution and a strategic framework for the application of technology in the judiciary. In addition to the changes

¹⁰ Southern Pac. Transport. Co. v. Stoot, 530 S.W.2d 930, 931 (Tex. 1975).

¹¹ For example, Charles Dickens wrote: "The little plaintiff or defendant, who was promised a new rocking-horse when Jarndyce and Jarndyce should be settled, has grown up, possessed himself of a real horse, and trotted away into the other world." CHARLES DICKENS, BLEAK HOUSE, reprinted in TRIAL AND ERROR: AN OXFORD ANTHOLOGY OF LEGAL STORIES 30 (Fred R. Shapiro & Jane Garry eds., 1998).

¹² See, e.g., Hiram E. Chodosh et al., *Indian Civil Justice System Reform: Limitation and Preservation of the Adversarial Process*, 30 N.Y.U. J. INT'L L. & POL. 1, nn.13, 14 (1997).

¹³ *Id.*

¹⁴ See David Hittner & Kathleen Weisz Osman, *Federal Civil Trial Delays: A Constitutional Dilemma?*, 31 S. TEX. L. REV. 341 (1990). For a discussion of the problem of delay in the United States see Michael L. Seigel, *Pragmatism Applied: Imagining a Solution to the Problem of Court Congestion*, 22 HOFSTRA L. REV. 567 (1994).

¹⁵ See, e.g., *The Ups and Downs of the English Legal System*, FIN. TIMES, May 9, 1989, at 22, available in LEXIS, News Group File ("The ever-more-insistent complaints of unnecessary delays and costs, together with the increasing case-loads of the courts, produced by the expansion of business as well as by the economic betterment and increased aspirations of the people, had made such reform unavoidable."). See also Dakolias, *supra* note 3; Hiram E. Chodosh et al., *Egyptian Civil Justice Process Modernization: A Functional and Systemic Approach*, 17 MICH. J. INT'L L. 865 (1996); Chodosh et al., *supra* note 12.

¹⁶ See, e.g., Chodosh et al., *supra* note 15; Chodosh et al., *supra* note 12. See also Britain's *Antiquated Courts*, ECONOMIST, Sept. 6, 1995, at 20, available in 1995 WL 9570524 (discussing Lord Woolf's proposals of "sensible changes designed to streamline civil-court procedures and to encourage mediation and arbitration, which are less costly ways of settling disputes than suing.").

¹⁷ See SUPREME COURT SINGAPORE, *supra* note 5, at 7.

aimed at reducing litigation delays, the judiciary has endeavored to facilitate access to the judicial system and to improve the overall quality of justice.¹⁸ Within three years of Pung How's appointment, the backlog of thousands of cases was cleared and now cases are being heard within weeks of being filed.¹⁹

This Comment examines the Singapore justice system as a potential paradigm for effective judicial reform. Part II documents the changes made to the judicial system over the past decade, emphasizing those reforms targeted to increase the efficiency of case disposition. Part III describes the impact of the reforms on the efficiency of judicial administration. Part IV discusses potential adverse effects that may be associated with the reforms and assesses the overall success of the recent changes implemented in the Singapore judiciary.

II. JUDICIAL REFORM IN SINGAPORE IN THE 1990S

A. *Overview of the Singapore Judiciary*

Modern Singapore was founded by Sir Stamford Raffles in 1819.²⁰ It formed, together with Malacca and Penang, part of the Straits Settlements from 1826 until it became a separate colony in 1946. Singapore attained internal self-government in 1959, became part of the Federation of Malaysia in 1963, and became an independent country on August 8, 1965.²¹ The legal system is a common law system in the English tradition.

The judicial power of Singapore is vested in the Supreme Court and such subordinate courts as are provided by law.²² The Supreme Court is composed of the Court of Appeal and the High Court.²³ The Court of Appeal became the final appellate court in Singapore in 1994, when appeals to the Judicial Committee of the Privy Council in London were abolished.²⁴ It consists of the Chief Justice and two Judges of Appeal.²⁵ It hears appeals

¹⁸ See generally *Subordinate Courts Annual Report 1999: Leading Justice@Subordinate Courts*, at 73 (visited June 15, 2000) <<http://www.gov.sg/judiciary/subct/justout/ar99/ar99.htm>> [hereinafter *Leading Justice*].

¹⁹ Tan Ooi Boon, *supra* note 6.

²⁰ Kevin Y.L. Tan, *A Short Legal and Constitutional History of Singapore*, in THE SINGAPORE LEGAL SYSTEM 26, 28 (Kevin Y.L. Tan ed., 1999) [hereinafter THE SINGAPORE LEGAL SYSTEM].

²¹ *Id.*

²² S'PORE CONST. pt. VIII (The Judiciary), art. 93.

²³ THE SINGAPORE LEGAL SYSTEM, *supra* note 20, at 249.

²⁴ *Id.*

²⁵ ANNUAL REPORT 1999, *supra* note 1, at 12.

from any judgment or order of the High Court.²⁶ The High Court consists of the Chief Justice, nine Judges and six Judicial Commissioners.²⁷ It has original civil and criminal jurisdiction, but it usually limits the exercise of its original jurisdiction to civil cases where the value of the subject matter in dispute exceeds \$250,000.²⁸ It also has appellate jurisdiction over cases decided in the Subordinate Courts.²⁹

A "subordinate court" is a court created under the Subordinate Courts Act and any other court where there is an appeal to the High Court.³⁰ The Subordinate Courts include the Civil Courts,³¹ the Criminal Courts,³² the Juvenile Court,³³ the Family Court,³⁴ the Coroner's Court,³⁵ and the Small Claims Tribunals.³⁶ In 1999, there were fifty-three District judges and fifteen magistrates.³⁷ The civil jurisdiction of the Subordinate Courts has significantly increased in the last decade.³⁸ In 1993 the civil jurisdiction of the District Courts increased from \$50,000 to \$100,000.³⁹ It was further increased to \$250,000 in 1997.⁴⁰ The Small Claims Tribunals' civil jurisdiction increased in 1995 from \$2,000 to \$5,000, and to \$10,000 with consent of the parties.⁴¹ In 1997 it was further increased to \$10,000 and

²⁶ *Id.* at 8.

²⁷ *Id.* at 12.

²⁸ *Id.* at 8; see also THE SINGAPORE LEGAL SYSTEM, *supra* note 20, at 255-70.

²⁹ *Id.* at 262.

³⁰ *Id.* at 270.

³¹ The Subordinate Courts of Singapore, *Civil Courts* (visited June 16, 2000) <<http://www.gov.sg/judiciary/subct/courts/civil.html>> [hereinafter *Civil Courts*]. Civil cases make up 30 percent of the Subordinate Courts' caseload. *Id.*

³² See The Subordinate Courts of Singapore, *Criminal Courts* (visited June 16, 2000) <<http://www.gov.sg/judiciary/subct/courts/criminal.html>>. Criminal cases make up 70 percent of the Subordinate Courts' caseload. *Id.*

³³ See The Subordinate Courts of Singapore, *Juvenile Court* (visited June 16, 2000) <<http://www.gov.sg/judiciary/subct/courts/juvenile.html>>. The Juvenile Court deals with all types of criminal offences by young offenders under the age of 16. *Id.*

³⁴ See The Subordinate Courts of Singapore, *Family Court* (visited June 16, 2000) <<http://www.gov.sg/judiciary/subct/courts/family.html>> [hereinafter *Family Court*]. The Family Court hears applications for divorce, maintenance, child custody, adoption, and protection from domestic violence. *Id.*

³⁵ See The Subordinate Courts of Singapore, *Coroner's Court* (visited June 16, 2000) <<http://www.gov.sg/judiciary/subct/courts/coroner.html>>. The Coroner's Court determines the cause and circumstance of deaths. *Id.*

³⁶ See The Subordinate Courts of Singapore, *Small Claims Tribunals* (visited June 16, 2000) <<http://www.gov.sg/judiciary/subct/courts/scat.html>>. The Small Claims Tribunals provide a fast and inexpensive way to resolve claims under \$10,000. *Id.*

³⁷ *Leading Justice*, *supra* note 18, at 118.

³⁸ *Id.* at 28.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

\$20,000 with consent of the parties. The civil jurisdiction of the Magistrates' Courts was increased from \$30,000 to \$60,000 in 1999.⁴²

The system of appeals has undergone significant changes. The final right of appeal to the Judicial Committee of the Privy Council in London was abolished in 1994.⁴³ In November 1998 Parliament amended the Supreme Court of Judicature Act to restrict the right of appeal.⁴⁴ Specifically, the amendment changed the minimum claim amount in civil cases from \$5,000 to \$50,000 for an automatic right to appeal to the High Court, and from \$30,000 to \$250,000 for an automatic right to appeal to the Court of Appeal.⁴⁵

B. *Judicial Reforms to Reduce Litigation Delays*

Adversarial proceedings often produce unnecessary delays, especially when litigants are able to protract the litigation process with impunity. A recent comparative study found that the use of information technology in courts and the management skills of the judge were the most important factors associated with a lower expected duration of cases.⁴⁶ In response to the problem of court delay, Singapore changed from a system of essentially party-controlled litigation to a system that gives the court a more active role in the progression of a case.⁴⁷ The judicial reforms have included the use of case management, the introduction of mediation as a form of dispute resolution, and the application of information technology in the court rooms.

1. *Case Management*

Case management refers to managerial intervention by a judicial officer soon after a case has been filed.⁴⁸ The purpose of this intervention is to reduce dilatory and inefficient litigation practices and to promote fair, speedy, and inexpensive resolution of disputes.⁴⁹ It often involves early

⁴² *Id.*

⁴³ THE SINGAPORE LEGAL SYSTEM, *supra* note 20, at 249; *Praise for Singapore's Judiciary*, STRAITS TIMES (Singapore), Jan. 10, 1999, available in LEXIS, News Group File.

⁴⁴ Tan Ooi Boon & Lim Seng Jin, *Appeal Limit Not Meant to Deny Access, Says CJ*, STRAITS TIMES (Singapore) Jan. 10, 1999, available in LEXIS, News Group File.

⁴⁵ *Id.*

⁴⁶ Edgardo Buscaglia & Maria Dakolias, *Comparative International Study of Court Performance Indicators: A Descriptive and Analytical Account*, Legal and Judicial Reform Unit, Legal Department, The World Bank (1999) at 26.

⁴⁷ See *infra* Part II.B.1.

⁴⁸ R. LAWRENCE DESSEM, PRETRIAL LITIGATION: LAW, POLICY & PRACTICE 516-20 (2d ed., 1996).

⁴⁹ *Id.* at 517.

identification of disputed issues of fact and law, establishment of a procedural calendar for the case, and exploration of consensual mechanisms of resolution of the case other than through a court trial.⁵⁰

Case management has generated controversy in the United States.⁵¹ Critics fear that judicial management may diminish the quality of justice.⁵² Others suggest that tighter judicial control over court proceedings actually enhances the quality of justice. For example, the U. S. Supreme Court stated that "if truth and fairness are not to be sacrificed, the judge must exert substantial control over the proceedings."⁵³ The Court has also observed that "[o]ne of the most significant insights that skilled trial judges have gained in recent years is the wisdom and necessity for early judicial intervention in the management of litigation."⁵⁴ In addition, one district court judge noted in an order imposing time limits that his court "was once subjected to the calling of ten firemen in an arson prosecution to prove a house burned down."⁵⁵ Moreover, in a recent study assessing court performance indicators, the management skills of the judge and court personnel was perceived to be the most important factor in the efficient and fair processing of a case.⁵⁶

In Singapore, Chief Justice Yong Pung How has encouraged judges to be more proactive in court.⁵⁷ Case management was initiated in early 1992 to clear a backlog of over two thousand cases awaiting trial, some of which had been filed over ten years earlier.⁵⁸ Case management commences when the pleadings are closed or when a case has been inactive for three or more months.⁵⁹ The Amended Rules of Court give the courts the power to direct parties to attend pre-trial conferences at any time after the commencement of the action.⁶⁰ The penalties for noncompliance include dismissal of the action

⁵⁰ See, e.g., RAND Institute for Civil Justice, *Research Brief: Evaluating the Civil Justice Reform Act of 1990* (visited Mar. 3, 2000) <<http://www.rand.org/publications/RB/RB9022/>>.

⁵¹ See, e.g., Robert F. Peckham, *The Federal Judge as a Case Manager: The New Role in Guiding a Case from Filing to Disposition*, 69 CAL. L. REV. 770 (1981) (urging more aggressive case management); Judith Resnik, *Managerial Judges*, 96 HARV. L. REV. 374 (1982) (judicial management may lower the quality of justice).

⁵² See Peckham, *supra* note 51; Resnik, *supra* note 51; see also *infra* Part IV.A.

⁵³ *Geders v. United States*, 425 U.S. 80, 87 (1976).

⁵⁴ *Hoffman-La Roche, Inc. v. Sperling*, 493 U.S. 165, 171 (1989).

⁵⁵ *United States v. Reaves*, 636 F. Supp. 1575, 1576 (E.D. Ky. 1986). He also noted that "[n]othing lulls an attorney to the passage of time like the sound of his or her own voice. Few attorneys can tell you what time it is without describing how the clock was made." *Id.* at 1579.

⁵⁶ Buscaglia & Dakolias, *supra* note 46, at 11.

⁵⁷ *Judges Need To Be More Proactive In Court, CJ Tells Meeting*, STRAITS TIMES (Singapore), Jan. 30, 1998, available in LEXIS, News Group File.

⁵⁸ SUPREME COURT SINGAPORE, *supra* note 5, at 56.

⁵⁹ *Id.* at 45.

⁶⁰ *Id.* at 48.

or any other order the court thinks appropriate.⁶¹ For example, an advocate and solicitor was committed to prison for seven days as punishment for failing to appear for a hearing before the Chief Justice.⁶² In another case, the district judge struck the defendant's counterclaim when they failed to meet a filing date ordered by the court.⁶³ In a case in which an advocate and solicitor intentionally abetted a client in delaying the judicial process, the High Court of Appeal declared that a lawyer should not thwart the integrity of the administration of justice by "delaying the judicial process by . . . nefarious means,"⁶⁴ and held that the only appropriate penalty was to strike the lawyer off the roll of solicitors and advocates.⁶⁵ Another measure implemented to expedite proceedings before the Supreme Court provides that all actions that have been dormant for more than one year are to be discontinued unless a party applies for special permission to restore the action.⁶⁶

The proactive management of cases includes trial management. For example, long-winded and irrelevant cross-examinations of witnesses are cut short.⁶⁷ In addition, adjournment or vacation of trial dates is permitted only for compelling reasons,⁶⁸ or in cases where rigid adherence to time lines would seriously compromise fairness.⁶⁹ For example, in two cases where counsel was unavailable during the trial dates, but had ample time to arrange for another counsel to take over the conduct of the case, the Court of Appeal rejected the application to postpone the trial dates.⁷⁰ In refusing to vacate the trial dates the Court stated:

⁶¹ *Id.*

⁶² *Re Tan Khee Eng John* (Singapore High Court 1997), available in 1997 SLR LEXIS 67.

⁶³ *Syed Mohamed Abdul Muthaliff & Anor v. Arjan Bhisham Chotrani* (Singapore High Court 1998), available in LEXIS, Singapore Case Law. The High Court affirmed the dismissal of the counterclaim. *Id.* The Court of Appeal reversed, stating that "in light of the appellants' past record, the very thin margin of default and the absence of uncompensatable damage or prejudice to the respondent, the appellants' default did not warrant the striking out of their counterclaim." *Syed Mohamed Abdul Muthaliff & Anor v. Arjan Bhisham Chotrani* (Singapore Court of Appeal 1999), available in 1999 SLR LEXIS 3, para. 24.

⁶⁴ *Law Society v. Dhanwant Singh* (Singapore High Court 1996), available in LEXIS 1996 SLR LEXIS 259.

⁶⁵ *Id.*

⁶⁶ ANNUAL REPORT 1999, *supra* note 1, at 41.

⁶⁷ SUPREME COURT SINGAPORE, *supra* note 5, at 51.

⁶⁸ *Id.* at 52.

⁶⁹ *See, e.g., Auto Clean 'N' Shine Servs. v. Eastern Publ'g Assoc. Pte. Ltd.* (Singapore Court of Appeal 1997), available in 1997 SLR LEXIS 70.

⁷⁰ *Chan Kern Miang v. Kea Resources Pte. Ltd.* (Court of Appeal 1998), available in LEXIS 1998 SLR LEXIS 94; *Tan Huay Lim v. Loke Chiew Mun & Anor* (High Court 1997), summarized in SUPREME COURT SINGAPORE, *supra* note 5, at 96 [hereinafter *Tan Huay Lim*].

The courts would of course try to accommodate the diaries of the solicitors if it was reasonable in the circumstances so that their clients' wishes [to be represented by a specific solicitor] could be granted. But this must always be subject to the paramount consideration that the smooth and efficient administration of the courts must not be compromised or affected in any way.⁷¹

Case management is also utilized in criminal cases; since 1994, pre-trial conferences have been held in criminal cases to monitor and control the pace and progress of the prosecution and thereby ensure that persons accused are brought to trial with minimal delay.⁷² Pre-trial conferences are scheduled about two and a half months after an accused person is first brought to the Subordinate Court after his arrest.⁷³ In short, case management has helped reduce court delays by making trial proceedings more efficient.

2. *Alternative Dispute Resolution*

Alternative mechanisms of dispute resolution include various approaches to resolving a conflict through the intervention of third parties, ranging from binding adjudicatory processes such as consensual arbitration to other processes such as mediation and negotiation.⁷⁴ While some scholars question the value of alternative dispute resolution,⁷⁵ others believe that less combative methods of processing cases would benefit the parties, particularly in cases involving long-term relationships.⁷⁶ Professor Frank E. Sander articulated the concept of a "multi-door courthouse" in which a case is first evaluated to determine its suitability to the available options for resolving the dispute, after which the controversy is assigned accordingly.⁷⁷

⁷¹ Tam Huay Lim, *supra* note 70.

⁷² SUPREME COURT SINGAPORE, *supra* note 5, at 49.

⁷³ *Id.*

⁷⁴ See RICHARD L. MARCUS ET AL., CIVIL PROCEDURE, A MODERN APPROACH 102-13 (1995).

⁷⁵ See, e.g., Owen M. Fiss, *Against Settlement*, 93 YALE L. J. 1073, 1076 (1984) (discussing problems such as party resource disparity); Judith Resnik, *Many Doors? Closing Doors? Alternative Dispute Resolution and Adjudication*, 10 OHIO ST. J. ON DISP. RESOL. 211 (1995); Marc Galanter & Mia Cahill, "Most Cases Settle": *Judicial Promotion and Regulation of Settlements*, 46 STAN. L. REV. 1339 (1994) (arguing that settlements are "not intrinsically good or bad").

⁷⁶ See Thomas J. Stipanowich, *The Multi-Door Courthouse and Other Possibilities*, 13 OHIO ST. J. ON DISP. RESOL. 303, 308-12 (1998).

⁷⁷ *Id.*

The multi-door courthouse and other forms of early neutral evaluation have been successfully used in many courts in the United States.⁷⁸

Mediation was introduced into the judicial system in Singapore in 1994, with the aim of providing a forum of resolution disputes that are less suited for adversarial litigation.⁷⁹ A multi-door courthouse was established in May of 1998 to provide free and confidential assistance to the public in selecting the most appropriate dispute resolution mechanism.⁸⁰ Its mission is to increase public awareness of dispute-prevention measures and inform the public about dispute-resolution mechanisms.⁸¹

a. Singapore Subordinate Courts

The Subordinate Courts introduced mediation for civil cases in 1994.⁸² The prospects of settlement are evaluated at two pre-trial conferences, and, if the parties consent, the case is referred to the Court Mediation Centre.⁸³ The Court Mediation Centre was established in 1995 for the Subordinate Courts, and was renamed the Primary Dispute Resolution Centre ("PDRC") in 1998 to emphasize the shift to mediation as the primary dispute resolution mechanism in civil, criminal, family and juvenile matters.⁸⁴ The Centre is headed by a District Judge and provides court-initiated mediation services free of charge.⁸⁵ A settlement judge assists the parties in negotiating settlements.⁸⁶ Matters discussed are kept confidential, and if the dispute is not resolved, a trial is held before a different judge.⁸⁷ Civil claims are mediated largely through evaluative mechanisms that focus on the likely

⁷⁸ *Id.* at 320.

⁷⁹ *Leading Justice*, *supra* note 18, at 27.

⁸⁰ THE SINGAPORE JUDICIARY, ANNUAL REPORT 1998, at 64 [hereinafter ANNUAL REPORT 1998]; The Subordinate Courts of Singapore, *The Multi-Door Courthouse* (visited June 16, 2000) <<http://www.gov.sg/judiciary/subct/courts/MDC.html>>.

⁸¹ See, e.g., The Subordinate Courts of Singapore, *Information Leaflets & Research Bulletins* (visited June 16, 2000) <<http://www.gov.sg/judiciary/subct/info/rb.html>>.

⁸² *Civil Courts*, *supra* note 31.

⁸³ Chief Justice Yong Pung How, Speech at the Supreme and Federal Court Judges' Conference in Perth, Australia (Jan. 28, 1998) (visited July 19, 2000) <<http://www.gov.sg/judiciary/supremect/speeches/cj980128.pdf>>.

⁸⁴ ANNUAL REPORT 1998, *supra* note 80, at 21.

⁸⁵ The Subordinate Courts of Singapore, *Primary Dispute Resolution Centre* (visited June 16, 2000) <<http://www.gov.sg/judiciary/subct/courts/mediation.html>> [hereinafter *Primary Dispute Resolution Centre*].

⁸⁶ *Civil Courts*, *supra* note 31.

⁸⁷ *Id.*

outcome of the dispute should the matter proceed to trial.⁸⁸ In addition to its mediation services, the PDRC provides training for staff and volunteer mediators.⁸⁹

Under the Community Mediation Centres Act of 1998, a magistrate may refer complaints for certain offenses deemed appropriate for mediation to a mediator of the Community Mediation Centre, with consent of the parties.⁹⁰ For international disputes, Court Dispute Resolution-International ("CDRI") was introduced in 1999 to provide for co-mediation with judges of other common law and civil law jurisdictions via video-conferencing.⁹¹

b. Singapore High Court

Since 1992, parties before the High Court have been required to attend a pre-trial conference to explore the possibility of settlement.⁹² After a successful pilot project, the Singapore Mediation Centre ("SMC") opened in August of 1997.⁹³ The SMC is a non-profit, non-partisan entity funded through the Ministry of Law and guaranteed by the Singapore Academy of Law.⁹⁴ Its panel of trained and experienced mediators include Senior Counsel,⁹⁵ leaders of several professions, and nominees from various industrial groups.⁹⁶ The SMC focuses on the parties' interests, rather than their strict legal rights, as the basis for resolving their dispute (interest-based mediation).⁹⁷ The Subordinate Courts have also started referring suitable cases to the SMC.⁹⁸ As an incentive to use the SMC to resolve disputes

⁸⁸ E-mail correspondence from Thian Yee Sze, Assistant Registrar, Singapore Supreme Court, to Karen Blöchlinger, Comment Author, *Pacific Rim Law and Policy Journal* (Jan. 12, 2000) (on file with the author) [hereinafter Thian Yee Sze].

⁸⁹ *Primary Dispute Resolution Centre*, *supra* note 85.

⁹⁰ ANNUAL REPORT 1998, *supra* note 80, at 55.

⁹¹ *Leading Justice*, *supra* note 18, at 80.

⁹² *Waiver and Refund of Court Hearing Fees For Users of the Singapore Academy of Laws Commercial Mediation Service* (Apr. 16, 1997), available in Announcements of the Supreme Court (visited Jul. 12, 2000) <<http://www.supcourt.gov.sg/news/medrel10.htm>>.

⁹³ SUPREME COURT SINGAPORE, *supra* note 5, at 54.

⁹⁴ *Id.*

⁹⁵ Senior Counsel is the Singapore equivalent of Queen's Counsel, a barrister appointed as counsel to the British Crown when the monarch is a female.

⁹⁶ SUPREME COURT SINGAPORE, *supra* note 5, at 54-55.

⁹⁷ Thian Yee Sze, *supra* note 88.

⁹⁸ Chief Justice Yong Pung How, *supra* note 83. In addition, the SMC has been working with members of the Information Technology industry to promote mediation as a vehicle for resolving electronic commerce disputes. See Chief Justice Yong Pung How, Speech at the Millenium Accord Signing Ceremony (Jan. 1, 1999), reprinted in SPEECHES OF THE CHIEF JUSTICE (visited July 19, 2000) <<http://www.supcourt.gov.sg/speeches/speechesmain.htm>>.

amicably, parties who have in good faith attempted mediation without success, may obtain a waiver or refund of court fees.⁹⁹

3. *Application of Technology*

The judicial system can be characterized as a complex information processing system: information enters in the form of pleadings and evidence, and exits in the form of judgments and opinions. Developments in information technology will likely improve the accuracy and efficiency of information flow in the judiciary.¹⁰⁰

Chief Justice Yong Pung How proposed the following strategic framework for the application of technology in the judiciary: (1) technology should foster greater access to the courts; there should be easy access to justice via consumer-friendly technology that is comprehensible and requires little or no training; (2) technology should enhance the role of the court as a service institution; (3) technology should improve the quality of justice; (4) technology should enhance the management of the justice system by increasing efficiency; (5) technology should not be used as a substitute for the knowledge, skills and judgment of individuals. Rather it should assist them in the exercise of their knowledge, skills and judgment; (6) technology should enhance productivity, reduce delay or otherwise be cost-effective; (7) technology should improve the decision-making process by providing complete and accurate information; (8) technology should be acceptable and convenient to end users; (9) technology should accommodate the need for data integrity, confidentiality, and the protection of privacy; and (10) technology should have a useful life.¹⁰¹ Based on these guidelines, the Supreme Court has implemented multiple projects using information technology to better serve the courts and the legal profession in Singapore.¹⁰²

In mid-1995, Chief Justice Yong Pung How launched the "Technology Court," in which all the computers are linked to enable them to share on-line information.¹⁰³ The court equipment includes a computer-based recording transcription facility to digitally record oral testimony, and a video conferencing facility, which enables foreign witnesses to give

⁹⁹ SUPREME COURT SINGAPORE, *supra* note 5, at 55.

¹⁰⁰ Robert Anderson et al., *The Impact of Information Technology on Judicial Administration: A Research Agenda for the Future*, 66 S. CAL. L. REV. 1762, 1765 (1993).

¹⁰¹ See Chief Justice Yong Pung How, Videotaped Message From the Honourable Chief Justice Yong Pung How at the Sixth Court Technology Conference (1999), *reprinted in* SPEECHES OF THE CHIEF JUSTICE (visited July 19, 2000) <<http://www.supcourt.gov.sg/speeches/speechesmain.htm>>.

¹⁰² SUPREME COURT SINGAPORE, *supra* note 5, at 78-89.

¹⁰³ *Id.* at 81.

evidence without having to be physically present.¹⁰⁴ The Subordinate Courts are currently equipped with video conferencing systems, computer-based recording transcription systems, litigation support systems for case presentation, and integrated audio-visual systems with remote control cameras.¹⁰⁵ Video conferencing has been used to reduce the trauma of vulnerable victims by permitting them to give evidence and be cross-examined from remote premises.¹⁰⁶ In addition, a foreign judge sat with a Singapore judge in mediation of a dispute via video link-up in 1999.¹⁰⁷

Another way in which information technology has improved the efficiency of the Singapore judiciary is through the Electronic Filing System ("EFS"). EFS allows for the electronic filing of court documents, which obviates the physical movement of people and documents, saves paper, and it is considerably faster than the old system.¹⁰⁸ Moreover, electronic documents are cheaper to store than their physical counterparts.¹⁰⁹ The EFS links the Singapore judiciary to a number of service bureaux, law firms and other organizations.¹¹⁰ Filing electronically under the first phase of EFS, implemented in March of 1997 in the Supreme Court, was on a purely voluntary basis.¹¹¹ Compulsory electronic filing for most documents was implemented in March of 2000.¹¹²

Since August 1998, all appeals to the Court of Appeal and Magistrate's Appeals have used electronic instead of paper documents.¹¹³ A recent survey of 120 lawyers involved in appeals to these courts indicated that they approved the use of electronic documents.¹¹⁴ In addition, the Supreme Court has used electronic documents in all criminal trials and selected civil trials since 1999.¹¹⁵ Hearings in Chief Justice Yong Pung How's court and the courts of Judges of Appeal Karthigesu and Thean also became fully electronic in August of 1999; court papers, photographs, and even videoclips can now be displayed on computer screens

¹⁰⁴ *Id.*

¹⁰⁵ *Leading Justice*, *supra* note 18, at 104.

¹⁰⁶ SUPREME COURT SINGAPORE, *supra* note 5, at 81.

¹⁰⁷ *Foreign and Singapore Judges to Mediate Case Via Video*, MALAYSIA GEN. NEWS, Apr. 11, 1999, available in LEXIS, News Group File.

¹⁰⁸ SUPREME COURT SINGAPORE, *supra* note 5, at 85.

¹⁰⁹ *Id.*

¹¹⁰ Media Release Feb. 25, 2000, *Singapore Judiciary to Make E-Justice a Reality* (visited Jun. 18, 2000) <<http://www.gov.sg/judiciary/supremect/news/efsnews2.html>>.

¹¹¹ Announcements of the Supreme Court, *Introduction to EFS Phase 1.2* (visited Dec. 5, 1999) <<http://www.gov.sg/judiciary/supremect/announcements/efsnewsr.html>>.

¹¹² Media Release Feb. 25, 2000, *supra* note 110.

¹¹³ ANNUAL REPORT 1998, *supra* note 80, at 76.

¹¹⁴ ANNUAL REPORT 1999, *supra* note 1, at 65.

¹¹⁵ *Id.*

simultaneously.¹¹⁶ Moreover, since early in 1998, an electronic library of case law and statutes has been available.¹¹⁷ Additional available information services include the Court of Appeal and Magistrate's Appeal Hearing Results List, Damages awarded in Defamation cases, and Damages awarded in Personal Injury and Death cases.¹¹⁸ Other recent technological innovations include an online case management system implemented in November 1999¹¹⁹ and numerous electronic kiosks where the public can avoid a court appearance and pay traffic fines.¹²⁰ An Integrated Criminal Justice System, which will enable information to be shared among agencies involved in the prosecution of offenses, is also scheduled to be available in 2002.¹²¹ In summary, the Singapore judiciary has used active case management, mediation, and information technology to attack the problem of court delays.

C. Other Judicial Reforms

Singapore courts have initiated a number of other reforms to strengthen the judiciary. For example, various government agencies, community-based organizations and volunteers have assisted the Subordinate Courts in setting up court-based programs.¹²² These include the family legal clinic, the family medical clinic, family care conferencing, youth care, peer advisors, peer mediation, and other mediation programs.¹²³ In addition, two night courts were established in 1992 to provide a more convenient forum for the working public to deal with regulatory and traffic offenses.¹²⁴ The Singapore judiciary also recently established several community-based rehabilitative programs for delinquent youths who commit minor crimes.¹²⁵ Further, the courts implemented the Victim Restoration

¹¹⁶ *Hearings Before CJ Go Electronic*, STRAITS TIMES (Singapore), Aug. 13, 1999, available in LEXIS, News Group File; *Extra Service Beyond the Courtroom Wins Accolades*, STRAITS TIMES (Singapore), Sept. 14, 1998, available in LEXIS, News Group File [hereinafter *Accolades*].

¹¹⁷ Lim Li Hsien, *New Online Tools Make Research Easier for Lawyers*, STRAITS TIMES (Singapore), Mar. 1, 1998, available in LEXIS, News Group File.

¹¹⁸ SUPREME COURT SINGAPORE, *supra* note 5, at 84.

¹¹⁹ *Singapore Courts Implement Online Case Management System*, STRAITS TIMES (Singapore), Nov. 11, 1999, available in LEXIS, News Group File.

¹²⁰ *Accolades*, *supra* note 116.

¹²¹ ANNUAL REPORT 1999, *supra* note 1, at 66.

¹²² *Leading Justice*, *supra* note 18, at 70.

¹²³ *Id.*

¹²⁴ The Subordinate Courts of Singapore, *Night Courts* (visited June 16, 2000) <<http://www.subcourts.gov.sg/courts/night.html>>.

¹²⁵ *Bold Changes in Dealing with Delinquents Proposed*, STRAITS TIMES (Singapore), Apr. 11, 1999, available in LEXIS, News Group File; Tan Ooi Boon & Sharon Vasoo, *Boot Camp: Young Offenders' Fate*, STRAITS TIMES (Singapore), May 13, 1999, available in LEXIS, News Group File.

Programme in 1999 to provide counseling service for victims of rape and their families.¹²⁶ Other important reforms are briefly described below,¹²⁷ including the creation of the Family Court, the promotion of public awareness of the judiciary, the organization of continuing judicial education, and the compilation of statistical information to document trends in criminal activities.

1. *Family Court*

In 1996, the Singapore judiciary removed the litigation of "matrimonial cases" from the jurisdiction of the High Court,¹²⁸ and established the Family Court as a venue for matters such as divorce, custody, maintenance, division of matrimonial property, adoption of children, and guardianship of infants.¹²⁹ The Family Court operates using mediation and counseling to assist divorcing parties in reaching amicable resolution of their disputes.¹³⁰ It includes a dedicated family protection unit and a medical clinic staffed by volunteer doctors for victims of violence, clinically experienced counseling, night mediation, and legal clinics run by volunteer lawyers who provide free legal advice to indigent litigants.¹³¹ Free counseling services are offered to families plagued by domestic violence.¹³² Another reform expedites divorce proceedings by requiring divorcing couples to settle the division of their property before filing for divorce.¹³³ Couples contemplating break-ups also have to attend compulsory counseling sessions so that they can understand better how their divorce will affect their children.¹³⁴ In 1999, the Family Court appointed twenty-eight *amici curiae* to look after the interests of children during divorce proceedings.¹³⁵ These independent lawyers interview children and their relatives so that the Family Court can make the appropriate decision in matters concerning child custody and access.¹³⁶

¹²⁶ *Leading Justice*, *supra* note 18, at 70.

¹²⁷ *See infra* Part II.C.1-4.

¹²⁸ *Leading Justice*, *supra* note 18, at 28.

¹²⁹ *Id.*; *Family Court*, *supra* note 34.

¹³⁰ *Leading Justice*, *supra* note 18, at 28.

¹³¹ *Id.*

¹³² *Accolades*, *supra* note 116.

¹³³ Tan Ooi Boon, *New Divorce Ruling: Settle Property First*, STRAITS TIMES (Singapore), Apr. 5, 1998, available in LEXIS, News Group File.

¹³⁴ Karen Wong, *Compulsory Counselling for Couples Who Break Up*, STRAITS TIMES (Singapore) April 11, 1999, available in LEXIS, News Group File.

¹³⁵ 28 "Friends" for Children in Divorce Cases, STRAITS TIMES (Singapore), July 11, 1999, available in LEXIS, News Group File.

¹³⁶ *Id.*

2. *Public awareness*

It is imperative that the public appreciate the importance of the rule of law to their freedom and happiness and the function of the judiciary as its guardian. As Justice See of the Alabama Supreme Court noted, "we cannot expect full public appreciation of the judicial function if the judiciary does not fulfill its educational function."¹³⁷ In order to enhance public understanding and appreciation of how courts administer justice, the Singapore judiciary initiated several public relations programs, including a public awareness campaign and exhibitions.¹³⁸ For example, visitors to the Supreme Court can view multi-media presentations on the Singapore judiciary.¹³⁹ Videos are available to introduce visitors to the Subordinate Courts, as well as informational pamphlets in different languages.¹⁴⁰ Historical background, organizational structure, and information about policies and procedures are also available on their websites.¹⁴¹

The Subordinate Courts organize school visits and competitions, such as an annual quiz to promote awareness about the Singapore Judicial System among secondary school students.¹⁴² In 2000, the Chief Justice offered a \$30,000 award for the most innovative idea from the public to improve the court system.¹⁴³

3. *Research*

The Singapore judiciary regularly monitors its own performance to assess how the judicial systems and access to justice can be improved.¹⁴⁴ Specifically, the Subordinate Courts use a Research and Statistics Unit that compiles statistical information about emerging trends in crimes, the causes of criminal behavior, and the effectiveness of sentencing options.¹⁴⁵ For

¹³⁷ Harold See, *Judicial Selection and Decisional Independence*, 61 LAW & CONTEMP. PROB. 141 (1998).

¹³⁸ SUPREME COURT SINGAPORE, *supra* note 5, at 72-73.

¹³⁹ ANNUAL REPORT 1999, *supra* note 1, at 59.

¹⁴⁰ *Leading Justice*, *supra* note 18, at 97.

¹⁴¹ Supreme Court Singapore, *Welcome to Supreme Court Singapore* (visited June 17, 2000) <<http://www.supcourt.gov.sg/>>; The Subordinate Courts of Singapore (visited June 17, 2000) <<http://www.subcourts.gov.sg/index1.html>>.

¹⁴² *Leading Justice*, *supra* note 18, at 98.

¹⁴³ Tan Ooi Boon, *\$30,000 for Best Idea to Improve Courts*, STRAITS TIMES (Singapore), Jan. 11, 2000, available in LEXIS, News Group File.

¹⁴⁴ *Leading Justice*, *supra* note 18, at 17-18.

¹⁴⁵ *Id.* at 18.

example, the Unit collects data to examine the causes of family violence,¹⁴⁶ youth rioting,¹⁴⁷ and juvenile shoplifting.¹⁴⁸ The Unit also gathers information to evaluate the effectiveness of court programs such as community service orders as a sentencing option for young offenders,¹⁴⁹ and the "Peer Advisor Programme," an initiative by the Juvenile Court to involve the community in restorative justice.¹⁵⁰ These studies will help to establish effective crime prevention and rehabilitation programs.

4. Education

The Singapore judiciary is also committed to continuing judicial education.¹⁵¹ For example, the Continuing Judicial Education Committee organized and held the first of a series of refresher seminars for judges in February of 1999.¹⁵² These seminars emphasize bench skills and professional knowledge.¹⁵³ Judges have also been provided with training in mediation and negotiation.¹⁵⁴ In addition, free workshops are available to teach lawyers how to use electronic documents.¹⁵⁵ These workshops prepare the legal profession for the eventual implementation of a version of the electronic filing system, which will enable all hearings to be conducted using electronic documents. Further, a Technology Awareness Programme exposes judicial officers and court administrators to new technologies.¹⁵⁶

In summary, the Singapore judiciary has implemented a variety of reforms for the purpose of improving the judicial system. These reforms consist of active case management, mediation programs, and improved courtroom information technology. Additional reforms include the creation

¹⁴⁶ Subordinate Courts, *Research Bulletin*, Issue No. 13, Aug. 1998 (visited June 17, 2000) <<http://www.gov.sg/judiciary/subct/info/rb.html>>. The study was based on a random sample of 1,398 cases filed in 1997. *Id.*

¹⁴⁷ Subordinate Courts, *Research Bulletin*, Issue No. 10, Apr. 1998 (visited June 17, 2000) <<http://www.gov.sg/judiciary/subct/info/rb.html>>.

¹⁴⁸ Subordinate Courts, *Research Bulletin*, Issue No. 20, Aug. 1999 (visited June 17, 2000) <<http://www.gov.sg/judiciary/subct/info/rb.html>>.

¹⁴⁹ Subordinate Courts, *Research Bulletin*, Issue No. 14, Oct. 1998 (visited June 17, 2000) <<http://www.gov.sg/judiciary/subct/info/rb.html>>.

¹⁵⁰ Subordinate Courts, *Research Bulletin*, Issue No. 21, Oct. 1999 (visited June 17, 2000) <<http://www.gov.sg/judiciary/subct/info/rb.html>>.

¹⁵¹ *Leading Justice*, *supra* note 18, at 112.

¹⁵² *Id.* at 113.

¹⁵³ *Id.*

¹⁵⁴ *Back to School for 16 Supreme Court Judges*, STRAITS TIMES (Singapore), Nov. 23, 1997, available in LEXIS, News Group File.

¹⁵⁵ ANNUAL REPORT 1998, *supra* note 80, at 76.

¹⁵⁶ *Id.* at 79.

of the Family Court, public awareness campaigns, research-based policymaking, and continuing judicial education.

III. THE EFFECT OF REFORMS ON JUDICIAL EFFICIENCY IN SINGAPORE

A. *Mediation: A Popular and Effective Alternative to Litigation*

As a result of the judicial reforms, mediation has become an effective alternative to litigation. About ninety-eight percent of the thousands of civil cases filed at the Subordinate Courts in the last two years have been resolved without going to trial.¹⁵⁷ For example, in the first nine months of 1999, only 420 out of the 30,484 cases filed (1.4%) went to trial.¹⁵⁸ During the same period, the four settlement judges at the Primary Dispute Resolution Centre ("PDRC") mediated almost 3,500 cases.¹⁵⁹ Mediation and counseling has resulted in 99.9% of divorce cases being uncontested.¹⁶⁰

Similarly, only about one in every twenty of the 2,000 civil suits filed in the High Court each year will end up in a courtroom.¹⁶¹ Even cases with claims valued at millions of dollars are usually resolved after initial talks in the judges' chambers or through mediation.¹⁶²

These statistics do not include many business-related claims that are mediated.¹⁶³ More than 300 cases have been mediated at the Singapore Mediation Centre ("SMC") since its inception in 1997.¹⁶⁴ In 1997, eighty-seven out of 110 cases (seventy-nine percent) referred for mediation were settled.¹⁶⁵ In 1998, 119 out of 170 cases (seventy percent) were settled.¹⁶⁶ In the first four months of 1999, thirty-three cases were mediated at the SMC, and twenty-six (seventy-nine percent) of them were settled.¹⁶⁷ The Court

¹⁵⁷ Tan Ooi Boon, *Courts Score High for Speedy Work*, STRAITS TIMES (Singapore), Jan. 10, 1999, available in LEXIS, News Group File [hereinafter *Courts Score High for Speedy Work*].

¹⁵⁸ Tan Ooi Boon, *Dispute Mediation Is Here to Stay*, STRAITS TIMES (Singapore), Dec. 4, 1999, available in LEXIS, News Group File.

¹⁵⁹ *Id.*

¹⁶⁰ Chief Justice Yong Pung How, Speech at the Opening of the Legal Year 1999 (Jan. 9, 1999), reprinted in SPEECHES OF THE CHIEF JUSTICE (visited July 19, 2000) <<http://www.supcourt.gov.sg/speeches/speechesmain.htm>>.

¹⁶¹ Tan Ooi Boon, *Introduction of Mediation Process: Lawyers Give Thumbs-Up*, STRAITS TIMES (Singapore), May 11, 1999, available in LEXIS, News Group File.

¹⁶² *Courts Score High for Speedy Work*, *supra* note 157.

¹⁶³ *Id.*

¹⁶⁴ Chief Justice Yong Pung How, Admission of Advocates and Solicitors, Chief Justice's Address (May 31, 1999), reprinted in SPEECHES OF THE CHIEF JUSTICE (visited July 19, 2000) <<http://www.supcourt.gov.sg/speeches/speechesmain.htm>>.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

Dispute Resolution-International regime has already mediated several complicated commercial cases since its inception in 1999.¹⁶⁸

Mediation has become a popular method of dispute resolution in Singapore. The attractions of court mediation are that it is free and confidential.¹⁶⁹ The director of the PDRC recently commented, "[t]he legal landscape in Singapore has changed. People here no longer depend on court litigation as the only way to resolve their legal disputes. The judiciary can now provide other ways to help them end their disputes, not only in a shorter time, but at a much lower cost."¹⁷⁰ Lawyers in Singapore also endorse mediation: ninety-five percent of lawyers polled in 1999 approved of the use of mediation, even though they would earn more money in a trial.¹⁷¹ Their reasons included higher client satisfaction, increased turnover rate for cases, and the comparative ease for resolving cases involving complex and technical matters.¹⁷²

B. Overall Effects of the Reforms on Case Disposition

Hard work,¹⁷³ vigilant case management, the use of alternative methods of dispute resolution, and the extensive computerization of records and operations have significantly increased the efficiency of the Singapore judicial system. The backlog in cases has been eliminated, and most cases filed are now disposed of in less than a year.¹⁷⁴ A recent comparative study found that Singapore had the highest case clearance rate of all the countries surveyed, even though it is among the countries with the fewest judges per capita.¹⁷⁵

¹⁶⁸ Seven commercial cases were conducted with foreign judges from the United States, Norway, and Australia. *Leading Justice*, *supra* note 18, at 80; see also *Courts Score High for Speedy Work*, *supra* note 157.

¹⁶⁹ *Courts Score High for Speedy Work*, *supra* note 157.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ It was not uncommon for judges of the Subordinate Courts to work until 9 or 10 pm. *Accolades*, *supra* note 116.

¹⁷⁴ SUPREME COURT SINGAPORE, *supra* note 5, at 60-61.

¹⁷⁵ Dakolias, *supra* note 3, at 133 (Singapore has 0.64 judges per 100,000 inhabitants. In comparison, the United States has about 1.2 judges per 100,000 inhabitants). *Id.* at 104.

1. *Case Disposition in the Supreme Court*

Early in 1992, the High Court had a backlog of over 2,000 cases awaiting trial, some of which had been filed more than ten years earlier.¹⁷⁶ These cases were cleared by the end of 1993.¹⁷⁷ In addition, out of a total of over 19,000 cases that were filed between 1988 and 1995, the Court had a backlog of over 7,000 inactive cases.¹⁷⁸ All of these were disposed of by early 1996.¹⁷⁹ Further, only forty-one out of a total 4,802 writs filed in 1996 and 1997 remained outstanding by May 31, 1999.¹⁸⁰ By that date, the High Court had also disposed of 2,160 out of 2,438 writs filed in 1998.¹⁸¹ The number of actions filed and disposed before the High Court in 1998 and 1999 is presented in Table 1.

Table 1. Proceedings before the High Court¹⁸²

	Filed in 1998	Disposed of in 1998	Filed in 1999	Disposed of in 1999
Writs of summons	2,438	3,272	1,565	2,241
Total number of civil actions	24,477	23,105	18,462	18,756
Criminal actions	86	82	64	69
Appellate civil actions	1,458	1,353	895	991
Appellate criminal actions	257	253	171	196

As a result of the increased rate of case disposition, the time interval between the filing and the conclusion of a case has decreased. In 1988, almost thirty percent of the writs filed took more than five years to conclude.¹⁸³ This was reduced to less than one percent for writs filed in 1993, and no case filed since 1995 has taken more than five years to be concluded.¹⁸⁴ In addition, cases disposed of in twelve months or less increased from 57.8% in 1995 to 99.6% in 1998.¹⁸⁵ This was achieved

¹⁷⁶ SUPREME COURT SINGAPORE, *supra* note 5, at 56.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ Yong Pung How, *supra* note 164.

¹⁸¹ *Id.*

¹⁸² The data in this table are derived from ANNUAL REPORT 1999, *supra* note 1, at 26-30. The data from 1999 includes information up to Oct. 1999.

¹⁸³ SUPREME COURT SINGAPORE, *supra* note 5, at 57.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.* at 59.

despite the fact that the total number of cases had increased from 2,337 in 1995 to 2,438 in 1998.¹⁸⁶

Table 2 shows the number of actions filed and disposed of before the Court of Appeal in 1998 and 1999. Since the imposition of the legislative restrictions on the automatic right to appeal,¹⁸⁷ the case load before the Court of Appeal has diminished. For example, out of 32,088 claims filed in the Subordinate Courts in 1998, only 462 went to trial, 87 were appealed and 14 were allowed.¹⁸⁸

Table 2. Proceedings before the Court of Appeal¹⁸⁹

	Filed in 1998	Disposed of in 1998	Filed in 1999	Disposed of in 1999
Civil appeals	445	452	246	308
Criminal appeals	24	25	24	28

2. *Case Disposition in the Subordinate Courts*

The Subordinate Courts handle ninety-five percent of all cases in Singapore.¹⁹⁰ Despite the heavier case load conferred on them by enlarging their civil jurisdiction, the Subordinate Courts have dealt with close to 2.4 million cases and other matters within strict time-lines between 1992 and September 1999.¹⁹¹

The caseload profile for Subordinate Court cases received in 1998 and 1999 is shown in Table 3. The Subordinate Courts received 372,990 matters in 1998, and 402,910 matters in 1999. This represents an eight percent increase in the caseload in 1999. Nevertheless, the Subordinate courts disposed of more cases in 1999 (486,438) than in 1998 (443,503).

¹⁸⁶ *Id.* at 57.

¹⁸⁷ See discussion *supra* Part II.A.

¹⁸⁸ *Has the Price of Justice Gone Up?—Higher Limits "Won't Hinder Justice,"* STRAITS TIMES (Singapore), Nov. 27, 1999, available in LEXIS, News Group File.

¹⁸⁹ The data in this table are derived ANNUAL REPORT 1999, *supra* note 1, at 28, 31. The data from 1999 includes information up to October 1999. *Id.*

¹⁹⁰ *Leading Justice*, *supra* note 18, at 50.

¹⁹¹ *Id.* at 29.

Table 3. Proceedings before the Subordinate Courts¹⁹²

	Filed in 1998	Disposed of in 1998	Filed in 1999	Disposed of in 1999
Criminal Division	239,187	247,098	272,420	279,494
Civil Division	78,856	69,410	76,440	73,450
Primary Dispute Resolution Centre	3,943	3,746	4,640	4,500
Small Claims Tribunals	39,860	40,476	39,630	42,240
Family Division	15,087	14,208	14,420	13,804

In summary, Singapore's judicial reforms of the 1990s have significantly increased the efficiency of the judicial system, in part because of the introduction of mediation as an alternative to litigation.

IV. ASSESSING THE SUCCESS OF THE JUDICIAL REFORMS

A. *The Judicial Reforms in Singapore Have not Adversely Impacted Access to Justice*

Recent judicial reforms have clearly increased the efficiency of the Singapore judiciary. The question is whether the increase in efficiency has adversely affected the overall system of justice. Although speedy resolution of disputes is desirable, an increase in efficiency is not an improvement if it results in inaccuracy, unfairness, or frayed relations between the parties, or between either party and the court.¹⁹³ For this reason, some scholars have criticized managerial judges for becoming "efficiency experts who promise calendar control"¹⁹⁴ at the expense of the quality of justice.¹⁹⁵ On the other hand, inefficiency in judicial administration itself has a significant impact on the quality of justice. A protracted civil litigation process discourages resort to the judicial system for the resolution of civil disputes and the enforcement of rights, thereby denying access to the courts. As one scholar noted, "[a] right that cannot be enforced or vindicated is like a hole in a doughnut."¹⁹⁶ Moreover, a 1975 study of federal courts in the United States indicated that efficiency did not compromise quality in judicial performance.¹⁹⁷ A more recent evaluation of judicial case management under the Civil Justice

¹⁹² The data are derived from *Leading Justice*, *supra* note 18, at 50-54.

¹⁹³ See Stipanowitch, *supra* note 76.

¹⁹⁴ Resnik, *supra* note 51, at 279.

¹⁹⁵ See generally Resnik, *supra* note 51.

¹⁹⁶ JEROME FRANK, COURTS ON TRIAL 105 (1949).

¹⁹⁷ Peckham, *supra* note 51, at 783.

Reform Act in the United States found that judicial management could reduce the time to disposition of a case with no change in direct litigation costs, satisfaction, and perceived fairness.¹⁹⁸

Another concern is that judicial reforms in Singapore have led to increases in the cost of operations and litigation.¹⁹⁹ Since 1993, the first day of trial is free, but thereafter charges escalate for each additional day of trial.²⁰⁰ Non-adherence to time limits are also costly; the penalties include fines and dismissal of claims.²⁰¹ However, the impact of increased court costs on universal access to the judicial system is ameliorated by the reduction in case disposition time, which is generally inversely related to attorney fees. Moreover, the majority of civil cases in Singapore are currently resolved through mediation, a service which is provided free of charge. Therefore, the resolution of disputes is probably achieved at a lower expense for most civil litigants, despite the increase in trial costs.

Since the court reforms have increased the pace of litigation, some lawyers claim that they do not have enough time to prepare for cases, especially those that involve complex issues.²⁰² In a survey of more than one-hundred law firms, seven out of ten lawyers said they faced problems preparing for civil court hearings that have been brought forward.²⁰³ However, the legitimacy of these problems is questionable in light of the fact that lawyers have a strong financial incentive in protracting cases.

Perhaps the most persuasive arguments against the judicial reforms are the current restrictions on the right to appeal.²⁰⁴ For example, when the measure to raise the claim base for appeals was debated in Parliament, several Members of Parliament feared that the changes would restrict public access to justice and give the impression that justice was reserved for the wealthy.²⁰⁵ In response, the Chief Justice noted that the raised limits were not to "prevent access to justice" but to "discourage non-serious appeals."²⁰⁶ Moreover, parties may still apply for special permission to file an appeal if

¹⁹⁸ RAND Institute for Civil Justice, *Research Brief, Just, Speedy and Inexpensive? An Evaluation of Judicial Case Management Under the CJRA* (visited Mar. 3, 2000) <<http://www.rand.org/publications/RB/RB9027/>>.

¹⁹⁹ Dakolias, *supra* note 3, at 132.

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² Tan Ooi Boon, *Early Trial Dates "Not a Problem,"* STRAITS TIMES (Singapore), Jan. 18, 1999, available in LEXIS, News Group File.

²⁰³ Tan Ooi Boon, *Courts Moving "too fast" for Lawyers,* STRAITS TIMES (Singapore), Apr. 11, 1999, available in LEXIS, News Group File.

²⁰⁴ See *supra* Part II.A.

²⁰⁵ Tan Ooi Boon & Lim Seng Jin, *supra* note 44.

²⁰⁶ Yong Pung How, *supra* note 160.

the amount of their claim is lower than the prescribed minimum.²⁰⁷ In addition, the limited right to appeal probably does not affect a significant number of people since most cases are resolved through mediation. In short, the judicial reforms in Singapore have not adversely impacted access to justice.

B. Singaporeans Have a High Level of Confidence in the Effectiveness and Fairness of Their Judiciary

Results from two surveys indicate that the Singapore community has high confidence in its judiciary. A survey conducted in 1998 was commissioned by the Subordinate Courts to assess the public perceptions of the judiciary.²⁰⁸ The survey was based on interviewing 1,519 people over the age of fifteen.²⁰⁹ According to the survey, Singaporeans approved of their judiciary:

- ninety-seven percent of the people interviewed agreed that the courts administer justice fairly to all;²¹⁰
- ninety-eight percent thought that the judiciary is equal or better than other judiciaries;²¹¹
- ninety-nine percent of those surveyed feel safe in Singapore;²¹²
- ninety-six percent felt that the courts independently carry out justice according to the law;²¹³
- ninety-three percent felt that the sentences are very effective or effective as a deterrent to potential offenders;²¹⁴ and
- seventy-four percent felt that the sentences imposed by the courts are just right, twenty-one percent felt that they are harsh or too harsh.²¹⁵

However, the awareness level of the courts' services and public education programs provided by the courts was low. Only forty-eight percent were

²⁰⁷ *Id.*

²⁰⁸ Subordinate Courts of Singapore, *Research Bulletin No. 12: Survey on Public Attitudes & Perceptions of the Judiciary of Singapore (1998)* (visited June 16, 2000) <<http://www.gov.sg/judiciary/subct/info/rb.html>>.

²⁰⁹ *Id.* at 1.

²¹⁰ *Id.* at 2.

²¹¹ *Id.* at 3.

²¹² *Id.*

²¹³ *Id.* at 2.

²¹⁴ *Id.*

²¹⁵ *Id.* at 3.

aware of mass media coverage of court cases, thirty-seven percent were aware of counseling services provided by the courts, and twenty-five percent were aware of the operation of Night Courts.²¹⁶

In 1999, the Subordinate Courts commissioned another survey,²¹⁷ which involved 1,511 respondents, including 300 lawyers, 301 educators, 300 social service personnel, 306 members of the business community, and 403 members of community groups.²¹⁸ Again, the public approval ratings were high:

- ninety-seven percent stated that they have full confidence in the fair administration of justice, regardless of language, race, religion or class;²¹⁹
- ninety-nine percent felt that the Subordinate Courts are better than or equal to other judiciaries;²²⁰
- eighty percent felt that the court fees are affordable;²²¹
- ninety-five percent agreed that mediation services have made it more affordable to access justice;²²²
- ninety-eight percent agreed that the courts independently administer justice according to law;²²³
- ninety-five percent felt that the Subordinate Courts are proactive in anticipating new conditions and emergent trends;²²⁴
- seventy-five percent felt that sentences imposed by the Courts are just right; however, twenty-one percent indicated that sentences are harsh or too harsh;²²⁵
- ninety-one percent were of the opinion that sentences are effective or very effective in deterring other potential offenders;²²⁶

²¹⁶ *Id.* at 6.

²¹⁷ Subordinate Courts of Singapore, *Research Bulletin No. 23: Survey on Public Attitudes & Perceptions of the Singapore Subordinate Courts* (visited June 16, 2000) <<http://www.gov.sg/judiciary/subct/info/rb.html>>.

²¹⁸ *Id.* at 12.

²¹⁹ *Id.* at 2.

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.* at 3. The 21% that felt sentences were overly harsh were mostly lawyers concerned about sentences for traffic offenses. *Id.*

²²⁶ *Id.*

- Among those who had had contact with the courts, eighty-eight percent felt that their matters at the Subordinate Courts are resolved satisfactorily;²²⁷
- eighty-six percent stated that the programs and orders of the Juvenile Court are effective in rehabilitating juveniles;²²⁸ and
- eighty-three percent agreed or strongly agreed that the counseling services provided by the Family Court are effective in resolving family disputes.²²⁹

Public awareness of court cases had increased since the first survey. Seventy-three percent knew of court cases through the media, sixty-one percent were aware of the counseling services, and forty-five percent had heard of the Night Courts.²³⁰ In short, Singaporeans have a high level of confidence in the effectiveness and fairness of their judiciary.

C. *The Singapore Judiciary Is Well-Respected Internationally*

Several international agencies have rated the Singapore judiciary highly in comparative surveys. For example, The World Competitiveness Yearbook, published by the International Institute for Management Development ("IMD") has consistently ranked Singapore's judicial system highly.²³¹ In 1999, IMD ranked Singapore first out of forty-seven countries in its assessment of legal frameworks. The study focused on the laws, and the way they are administered and adjudicated by the judiciary.²³² IMD also ranked Singapore fourth out of forty-six countries, and first in Asia, in a study on the confidence in fair administration of justice.²³³ By comparison, the legal framework of the United Kingdom was fourteenth and that of United States was thirty-second.²³⁴

Singapore also had the highest quality judiciary according to a 1999 survey conducted by the Political and Economical Risk Consultancy ("PERC"), an international consulting firm.²³⁵ The PERC survey included

²²⁷ *Id.* at 8.

²²⁸ *Id.* at 6.

²²⁹ *Id.* at 7.

²³⁰ *Id.* at 10.

²³¹ Dakolias, *supra* note 3, n.185.

²³² WORLD COMPETITIVENESS YEARBOOK, *supra* note 1, at 76-77.

²³³ SUPREME COURT SINGAPORE, *supra* note 5, at 138; see also *Singapore Courts Implement Online Case Management System*, *supra* note 119; Lim Li Hsien, *Singapore's Legal Framework Tops Again*, STRAITS TIMES (Singapore), May 16, 1998, available in LEXIS, News Group File.

²³⁴ *Id.*

²³⁵ Country Risk Report, *supra* note 1.

twelve Asian countries and considered the transparency, reliability, and independence of the judicial system.²³⁶ Another comparative study of the efficiency of judicial administration indicated that ninety-seven percent of respondents agreed strongly that the Singapore courts administer justice fairly.²³⁷ This study used data from first instance courts of eleven different countries over a period from 1990 to 1996.²³⁸ According to an annual report published by the Washington-based Cato Institute and the Fraser Institute in Canada, the Singapore judiciary scored a perfect ten for its contributions in maintaining the rule of law, competitiveness of the economy, and economic freedom in Singapore.²³⁹ In addition, the British Lord High Chancellor²⁴⁰ has praised the Singapore judiciary for using information technology effectively to improve the court's efficiency.²⁴¹ The United States National Center for State Courts conference ("NCSC") has also recognized Singapore's use of technology to improve judicial efficiency. The NCSC featured the Electronic Filing System at a 1999 conference.²⁴² Finally, the World Bank has recommended Singapore's Subordinate Courts as a model for other countries to study.²⁴³ In short, the judicial reforms in Singapore have met with world-wide acclaim.

In summary, the judicial reforms in Singapore have been extremely successful. They have improved efficiency, but not to the detriment of access to justice. Singaporeans have a high level of confidence in the effectiveness and fairness of their judiciary, and the Singapore judiciary is well-respected internationally.

V. CONCLUSION

Chief Justice Yong Pung How has implemented many changes in the Singapore judicial system since assuming office in 1990. The result has been an impressive increase in the efficiency of judicial administration. The

²³⁶ *Id.*

²³⁷ Dakolias, *supra* note 3, at 131.

²³⁸ *Id.* at 95-96.

²³⁹ Subordinate Courts of Singapore, *Judiciary and Legal Institutions Score a Perfect Ten, Judicare May 2000* (visited July 17, 2000) < <http://www.gov.sg/judiciary/subct/info/judimay.pdf> >.

²⁴⁰ The Lord High Chancellor is the highest judicial office in Britain.

²⁴¹ *Praise For Singapore's Judiciary*, *supra* note 43.

²⁴² The Supreme Court of Singapore, *Judiciary Electronic Filing System To be Showcased to World Audience*, Sept. 4, 1999 (visited July 12, 2000) < <http://www.supcourt.gov.sg/news/medrel22.htm> >.

²⁴³ Tan Ooi Boon, *S'pore Courts "Have World-class Stature, Changes in Dealing with Delinquents Proposed"*, STRAITS TIMES (Singapore), Apr. 11, 1999, available in LEXIS, News Group File; *World Bank Picks Singapore Courts As Model*, STRAITS TIMES (Singapore), Apr. 11, 1999, available in LEXIS, News Group File.

reforms have limited the adversarial model, both by increasing judicial intervention in the early stages of the case,²⁴⁴ and by making mediation available as a alternative to litigation.²⁴⁵ Today, most cases filed are resolved by mediation.²⁴⁶ This emphasis on extra-judicial dispute resolution reflects the country's traditional culture.²⁴⁷ The increased efficiency of the court system preserves a more effective adversarial process for those matters that cannot be consensually resolved. In addition to promoting energetic judicial case management with a strong focus on providing alternative means for resolving disputes, Chief Justice Yong Pung How initiated the use of information technology in the court room. Moreover, other court-based programs such as community-based rehabilitative programs for delinquent teenagers, public awareness campaigns and continuing legal education for judicial officers and court administrators have helped to improve the quality of the judicial system.²⁴⁸

The increase of court-related costs and the limits on the right to appeal associated with the reforms raise questions about access to the judicial system; however, these cost must be viewed in light of the costs inherent in an inefficient judicial system. Delays in civil litigation result in increased expenses, impede the enforcement of legal rights, and discourage the use of the courts, thus denying access to justice. In addition, the limits on the right to appeal and the increased court costs do not affect many people because most cases are resolved free of charge through mediation.

Moreover, the Singapore judiciary is well-respected, both in Singapore and internationally. Singaporeans have a high level of confidence in the effectiveness and fairness of their judiciary,²⁴⁹ and international organizations hold out the Singapore judicial system as a desirable model.²⁵⁰ The description of the Singapore judicial system as *primus inter pares*²⁵¹ is certainly justified.

²⁴⁴ See *supra* Part II.A.

²⁴⁵ See *supra* Part II.B.

²⁴⁶ See *supra* Part III.A.

²⁴⁷ *Leading Justice*, *supra* note 18, at 27.

²⁴⁸ See *supra* Part II.C.

²⁴⁹ See *supra* Part IV.B.

²⁵⁰ See *supra* Part IV.C.

²⁵¹ *Primus inter pares* is latin for first among equals.